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8 UNITED STATES BANKRUPTCY COURT
9 EASTERN DISTRICT OF CALIFORNIA

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11 In re
12 BARRY DOUGLAS MITCHELL and
DONNA KAY MITCHELL,
13 Debtors.
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16
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Case No. 09-35400-C-7

DC NO. SLF- 8

CHAPTER 7 TRUSTEE'S MOTION FOR
AUTHORIZATION TO SELL REAL
PROPERTY

Date: August 24, 2010

Time: 9:30 a.m.

Place: Department C

The Honorable Christopher M. Klein

1 Chapter 7 Trustee Gary R. Farrar respectfully moves for authorization to sell two
2 adjacent parcels of real property and improvements located in Stockton, California: 1712 Sutro
3 Avenue (the "Sutro Property") and 1715 Report Avenue (the "Report Property") (collectively, the
4 "Properties").

5 Mr. Farrar believes the sale of the Properties is in the best interests of the creditors
6 and this Court should approve it pursuant to Bankruptcy Code Section 363(b).

7 Mr. Farrar represents the following:

8 1. On July 24, 2009, the Debtors filed this case. Gary R. Farrar was appointed
9 Chapter 7 Trustee.

10 2. Mr. Farrar learned that, on or about April 1, 2009, the Debtors had
11 transferred the Properties to their adult son, Ty Mitchell. The Sutro Property contains a single
12 family residence, which Ty Mitchell lives in. The Report Property is vacant land and is adjacent to
13 the Sutro Property. The Report Property has only nominal value unless the same owner owns
14 both it and the Sutro Property. (Farrar Decl. ¶ 2).

15 3. On or about September 3, 2009, Mr. Farrar filed an adversary proceeding
16 against the Debtors and Ty Mitchell (the "Defendants"), entitled *Gary R. Farrar v. Barry Mitchell,*
17 *et al.*, Adversary Proceeding No. 09-2560 (the "Fraudulent Conveyance Lawsuit"), to avoid and
18 recover the transfers of the Properties. In their Answers, the Defendants denied the transfer was
19 fraudulent.

20 4. On or about April 13, 2010, Mr. Farrar filed an adversary proceeding
21 objecting to the Debtors' discharge, entitled *Gary R. Farrar v. Barry Mitchell, et al.*; Adversary
22 Proceeding No. 10-02211 (the "Discharge Lawsuit").

23 5. In May 2010, Mr. Farrar and the Debtors entered into negotiations and met
24 in person, with counsel, to attempt to resolve the Fraudulent Conveyance Lawsuit and the
25 Discharge Lawsuit (collectively, the "Adversary Proceedings"). The negotiations and meeting
26 were successful, and the parties reached a proposed settlement of the Adversary Proceedings.
27 (Farrar Decl. ¶ 3).

1 6. On June 4, 2010, Mr. Farrar filed a motion for authorization to compromise
2 the Adversary Proceedings, which the Court granted at a hearing on July 13, 2010. Under the
3 terms of the compromise, Ty Mitchell has conveyed to Mr. Farrar all of his right, title, and interest
4 in and to the Properties. In exchange, Mr. Farrar agreed to (i) dismiss the Adversary
5 Proceedings, (ii) allow Ty Mitchell to continue residing at the Sutro Property, rent free, through
6 September 30, 2010, and (iii) pay the Defendants in the Adversary Proceedings \$8500 if
7 Mr. Farrar is able to sell the Properties. (Collectively, the "Compromise"). (Farrar Decl. ¶ 4).

8 7. On July 8, 2010, this Court granted Mr. Farrar's application to employ Sheri
9 Midgley of Sheri Midgley Realty to market and sell the Properties.

10 8. Mr. Farrar evaluated the issue of whether the estate would be required to
11 pay capital gains taxes on the income generated by the sale of the Properties and concluded that
12 it would not. (Farrar Decl., ¶ 5).

13 9. The Defendants did not schedule any liens against the Properties and
14 Mr. Farrar is unaware of any liens. (Farrar Decl. ¶ 6).

15 10. Mr. Farrar believes that there is equity in the Properties and a sale of the
16 Properties is the best method of liquidating it for the benefit of the estate. (Farrar Decl., ¶ 7).

17 11. On June 4, 2010, Mr. Farrar entered into two written contracts to sell the
18 Properties to James Hood. (Farrar Decl., ¶ 8).

19 12. Mr. Hood agreed to pay Mr. Farrar \$40,000 on an "AS IS" basis without any
20 warranties to purchase the Sutro Property, which contains the residence. Mr. Hood also agreed
21 to pay (and has paid) an initial deposit of 1 percent of the purchase price, which he is required to
22 increase to 5 percent on the day of the hearing on this motion. (Farrar Decl., ¶ 9, Ex. A).

23 13. Mr. Hood agreed to pay Mr. Farrar \$14,000 on an "AS IS" basis without any
24 warranties to purchase the Report Property, which is vacant land. Mr. Hood also agreed to pay
25 (and has paid) an initial deposit of 1 percent of the purchase price, which he is required to
26 increase to 5 percent on the day of the hearing on this motion. (Farrar Decl., ¶ 10, Ex. B).

27 14. Each sale is contingent on Court approval of this Motion. (Farrar Decl., ¶ 11).

1 14. To help ensure that the Properties are sold for the maximum sale price,
2 Mr. Farrar proposes that the sales be subject to overbidding at the hearing. He proposes the
3 following for overbidding:

4 • Any party interested in overbidding must buy both Properties together,
5 because the Report Property is of only nominal value without the Sutro Property.

6 • The minimum overbid shall be at least \$56,000, which is \$2500 more
7 than the proposed sales price.

8 • The terms of the overbid sale must be the same as the signed sales
9 contracts. The overbid buyer must, at the hearing demonstrate that he/she/it has the
10 financial ability to close the transaction within 10 days of the hearing. The overbid buyer
11 must deliver to Mr. Farrar at the hearing a nonrefundable deposit of at least 5 percent of
12 the purchase price because of the risks to the estate of losing the sales.

13 • Successive bids must be made in increments of at least \$500.
14 (Farrar Decl., ¶ 12).

15 15. Mr. Farrar believes the sale of the Properties is in the best interests of the
16 creditors and the Court should approve them under Bankruptcy Code Section 363. (Farrar
17 Decl., ¶ 13).

18 16. Mr. Farrar respectfully requests that the Court authorize the sales of the
19 Properties on the terms set forth in this Motion and that it grant such other relief as is just and
20 proper.

21 Dated: July 23, 2010

THE SUNTAG LAW FIRM
A Professional Corporation

23 By: /s/ Dana A. Suntag
24 DANA A. SUNTAG
25 Attorneys for Chapter 7 Trustee,
26 GARY R. FARRAR
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